

HOUSE No. 1057

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act To Increase Insurance Capacity in the Commonwealth.

PETITION OF:

NAME:

James T. Welch

DISTRICT/ADDRESS:

6th Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1119 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO INCREASE INSURANCE CAPACITY IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by inserting in Line 37 after the words "chapter 175D" the following:-

3 Any insurance policy procured pursuant to this section shall contain the following disclosure notice to the
4 policyholder: This policy is insured by a company which is not admitted to transact insurance in the
5 commonwealth, is not supervised by the commissioner of insurance, and, in the event of an insolvency of
6 such company, a loss shall not be paid by the Massachusetts Insurers Insolvency Fund under chapter
7 175D. The commissioner may by regulation amend the foregoing disclosure notice.

8 SECTION 2. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition,
9 is hereby further amended by striking in Line 61 the word "or".

10 SECTION 3. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition,
11 is hereby further amended by inserting in Line 65 after the words "section 20A" the following:- ; or (c)
12 such company is an eligible alien unauthorized insurer, as defined in section 168A of this chapter.

13 SECTION 4. Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby
14 amended by inserting after section 168 the following new section:-

15 Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a company formed
16 under the laws of any government or state other than the United States or one of its states or its territories
17 that has filed an application with the commissioner pursuant to subsection (c)(4) of this section, which
18 application has been approved by the commissioner.

19 (b) Notwithstanding any general or specific law to the contrary, a special broker licensed by the
20 commissioner pursuant to section 168 of this chapter may procure insurance from any company formed

under the laws of any government or state other than the United States or one of its states or its territories that is not authorized to transact business in this commonwealth if:

(1) such company has been determined by the commissioner to be an eligible alien unauthorized insurer pursuant to subsection (c)(4) of this section;

(2) the special broker has executed and filed an affidavit with the commissioner within twenty days after procuring such insurance stating that the full amount or type of insurance cannot be obtained from among companies admitted to transact insurance in the commonwealth after a diligent effort has been made to do so and that the amount of insurance procured in such company is only the excess over the amount so procurable from admitted companies;

(3) the procured policy contains the disclosure notice required by section 168 of this chapter; and

(4) all other requirements of this section and of section 168 of this chapter that are not inconsistent with this section have been met.

Insurance procured under this section shall be valid and enforceable as to all parties.

Nothing in this section shall be deemed to amend or modify any of the provisions of, or any of the exemptions specified in, section 168 of this chapter that are not inconsistent with this section.

(c) No company shall be determined to be an eligible alien unauthorized insurer unless it:

(1) has provided satisfactory evidence to the commissioner of its good repute and financial integrity;

(2) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction in an amount of at least \$20,000,000;

(3) has in force a United States trust fund of not less than the greater of:

(i) \$5,400,000; or

(ii) A percentage of its United States surplus lines gross liabilities arising from business written on or after January 1, 1998, excluding aviation, wet marine, transportation insurance and direct procurement placements, said percentage to equal the percentage, and be subject to any cap, employed by the International Insurance Department of the National Association of Insurance Commissioners, as of December 31 next preceding the date of determination, where:

(I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to this chapter for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the commonwealth. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the

requirements of the Standard Form Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners;

(II) The company may request approval from the commissioner to use the trust fund to pay valid surplus lines claims; provided, however, that the balance of the trust fund is never less than the minimum amount required by this subsection;

(III) In calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or territory of the United States, not to exceed the amount of the company's loss and loss adjustment reserves in that particular state or territory; and

(4) has submitted to the commissioner an application evidencing the company's compliance with the requirements of this section that has been approved by the commissioner.

(d) The application required by subsection (c)(4) of this section shall be on forms issued or approved by the commissioner, and must include the following information regarding the alien unauthorized insurer applicant:

(1) Evidence that the unauthorized alien insurer has been listed by the International Insurers Department of the National Association of Insurance Commissioners;

(2) A certified audited financial statement of the alien unauthorized insurer reflecting information as of a date no more than twelve (12) months prior to the submission of the application evidencing compliance with the capital and surplus requirements of subsection (c)(2) of this section and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer's loss reserves;

(3) A copy, certified by the trustee, of the United States trust agreement required by subsection (c)(3) of this section prepared in accordance with the National Association of Insurance Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines Insurers;

(4) A copy, certified by the trustee, of the most recent quarterly statement of account or list of assets in the trust account required by subsection (c)(3) of this section evidencing that the alien unauthorized insurer has in force, as of the end of the most recent quarter, assets in the amounts required by subsection (c)(3) of this section;

(5) A certified copy of the alien unauthorized insurer's current license or certificate of authority issued by its domiciliary jurisdiction indicating such company is authorized to insure the types of risks in its domiciliary jurisdiction that it proposes to insure in the commonwealth;

(6) A Certificate of Good Standing, or substantially similar documentation, issued by the alien unauthorized insurer's jurisdiction of domicile;

(7) Biographical affidavits, on forms promulgated by the National Association of Insurance Commissioners or approved by the commissioner, for all executive officers, directors, and senior management personnel of the alien unauthorized insurer, prepared no more than twelve (12) months prior to the submission date of the application required by subsection (c)(4) of this section; and

(8) Such additional information as the commissioner may require in order to determine whether the alien unauthorized insurer complies with the requirements of this section.

(e) The commissioner may refuse to approve an application pursuant to this section if he or she is of the opinion that such refusal will be in the public interest. In reviewing an application the Commissioner may consider such factors as:

(1) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;

(2) The unavailability of the particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this section and section 168 of this chapter;

(3) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(4) The kinds of business the company writes, its net exposure and the extent to which the company's business is diversified among several lines of insurance and geographic locations; and

(5) The past and projected trend in the size of the company's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria

(f) The commissioner may revoke a company's status as an eligible alien unauthorized insurer in accordance with the terms and conditions of section 5 of this chapter if at any time the commissioner has determined that the insurer:

(1) Is in unsound financial condition or has acted in an untrustworthy manner;

(2) No longer meets the standards set forth in subsection (c) of this section;

(3) Has willfully violated the laws of the commonwealth; or

(4) Does not conduct a proper claims practice.